

Federal Court



Cour fédérale

**Date: 20111220**

**Docket: IMM-1621-11**

**Citation: 2011 FC 1498**

**Toronto, Ontario, December 20, 2011**

**PRESENT: The Honourable Mr. Justice Zinn**

**BETWEEN:**

**KUNDAN SINGH**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**REASONS FOR JUDGMENT AND JUDGMENT**

[1] At the conclusion of the hearing I informed the parties that the application would be dismissed. These are my reasons.

[2] The applicant, Kundan Singh, is a 43 year old citizen of India. He arrived in Canada in 2001 and claimed refugee status on political and religious grounds; his claim was refused.

[3] In September 2005, the applicant met his sponsor and they were soon married on December 14, 2005. The sponsor began working as a housekeeper for an oil drilling company in Fort McMurray, Alberta. She works in Alberta three out of four weeks each month. On her week off, she generally returns to live with the applicant in their rented basement apartment in Brampton, Ontario.

[4] The applicant's native tongue is Punjabi. He learned English in Toronto while working as a truck driver. Although he is not yet fluent in English, the couple say they understand each other. The couple say they are saving to purchase a home together in the future. They maintain separate bank accounts, except for one joint account for daily expenses.

[5] The officer interviewed the applicant and his sponsor on February 18, 2011 and did not believe in the genuineness of the couple's relationship for three main reasons:

- (i) The applicant's knowledge of his sponsor's earnings;
- (ii) The applicant's proficiency in English; and
- (iii) The lack of documentation.

[6] At the interview, the sponsor explained that she has been working in Alberta over the past three years where she resides for at least three out of four weeks each month. When questioned on his wife's salary, the applicant incorrectly stated that it was \$35,000 annually. In fact, the sponsor makes an annual salary of \$118,000; more than triple what the applicant thought she made. The officer was incredulous that a bona fide couple would live apart for such long periods of time without the applicant having a better understanding of his wife's earnings in Alberta.

[7] Secondly, the officer acknowledged that the sponsor only spoke English and that the applicant required an English interpreter during the interview. The officer found it questionable that a bona fide couple could maintain a relationship over more than five years with this significant language barrier. Further, the officer questioned whether the marriage was initially entered into for immigration purposes based on the couple's short courtship before marriage and the applicant's poor proficiency in the English language.

[8] Finally, the officer found that there was a significant lack of documentation including photos of the couple together and of documentation supporting their cohabitation. The officer described the photos that were submitted as staged. The couple gave conflicting responses as to the location where the photographs were taken only four days earlier. The applicant said they were taken upstairs in the house where they rent a basement apartment while his sponsor said they were taken at a friend's house.

[9] Based on these observations and findings, the officer was not satisfied that the applicant and his sponsor were cohabitating and in a bona fide relationship and the application for permanent residence as a member of the Spouse in Canada Class was denied.

[10] The only issue is whether the officer erred in deciding that the applicant and his sponsor were not cohabiting and were not in a bona fide relationship.

[11] To be considered a member of the Spousal Class, an applicant must be the spouse or common-law partner of a sponsor and cohabit with that sponsor in Canada. An applicant will not be considered a spouse or partner of the sponsor if the marriage or partnership is not genuine or was entered into primarily for the purpose of acquiring immigration status: *Chertyuk v Canada (Minister of Citizenship and Immigration)*, 2008 FC 870, [2008] FCJ No 1086 at para 26. In determining whether a marriage or partnership is genuine, an officer must assess the credibility of the applicant and make findings of fact based on all relevant evidence before him or her.

[12] The applicant submits that the officer made negative inferences based on minor inconsistencies that he observed during the separate interviews. The officer identified these inconsistencies to the applicant and sponsor and gave them an opportunity to provide an explanation. I agree with the submission of the respondent that the applicant essentially disputes the weight the officer gave to these discrepancies. It is not the Court's role to re-weigh the evidence; rather, the Court must decide whether the officer's decision was reasonable based on the evidence that was before him or her.

[13] The facts in this case are similar to those in *Manbodh v Canada (Minister of Citizenship & Immigration)*, 2010 FC 190 where an immigration officer found that the common-law relationship was not genuine and the couple was not cohabiting based upon the lack of evidence of cohabitation coupled with the applicant's lack of knowledge about her sponsor's employment. Justice Boivin found that the applicant had failed to provide valid evidence for the Court to

intervene and that it was not unreasonable for the officer to conclude that cohabitation had not been proven.

[14] In this case, the officer evaluated the documentary evidence provided and found it to be lacking and the photos staged. Although the officer provided the applicant and the sponsor with an opportunity to explain inconsistencies and time to submit additional materials, they failed to convince him that their relationship was genuine. The applicant did not identify relevant evidence that ran contrary to the officer's conclusion on a central issue and for which the officer had not explained his position.

[15] The applicant may disagree with the officer's decision; however, it cannot be said to be unreasonable.

[16] Neither party proposed a question for certification.

**JUDGMENT**

**THIS COURT'S JUDGMENT is that** this application is dismissed and no question is certified.

"Russel W. Zinn"

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Judge

**FEDERAL COURT**  
**SOLICITORS OF RECORD**

**DOCKET:** IMM-1621-11

**STYLE OF CAUSE:** KUNDAN SINGH v THE MINISTER OF  
CITIZENSHIP AND IMMIGRATION

**PLACE OF HEARING:** Toronto, Ontario

**DATE OF HEARING:** December 20, 2011

**REASONS FOR :** ZINN J.

**DATED:** December 20, 2011

**APPEARANCES:**

Mak Sultan FOR THE APPLICANT

Margherita Braccio FOR THE RESPONDENT

**SOLICITORS OF RECORD:**

Barrister and Solicitor FOR THE APPLICANT  
Toronto, Ontario

Myles J. Kirvan FOR THE RESPONDENT  
Deputy Attorney General of Canada